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December 29, 1993

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Re: Docket Number 90-314

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Enclosed for filing are an original and (12) twelve copies of Citizens Utilities Company's Opposition to Petitions for Reconsideration in the Amendment of the Commission's Rules to Establish New Personal Service Communications Services.

Please provide a stamped-in copy in the enclosed prepaid postage envelope.

Very truly yours,



Ellen S. Deutsch
Senior Counsel

ESD:tb

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Amendment of the Commission's
Rules to Establish New Personal
Communications Services

) FCC 93-451
)
) GEN Docket No. 90-314
)
) RM-7140, RM-7618

To: the Commission

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

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SUMMARY

Citizens Utilities Company, a local exchange carrier serving primarily small and rural communities, opposes petitions for reconsideration of the Commission's PCS rules to the extent that any changes would undermine the goal of universal deployment of PCS, especially in rural areas. Congress has mandated that the Commission's PCS rules and policies further this goal.

Citizens agrees that the cellular eligibility restrictions should be revised so as not to unnecessarily preclude rural telcos from participating in the PCS market. First of all, however, the Commission must finalize its definition of "rural telco" in the competitive bidding proceeding. This definition should include telcos whose primary business is provision of local exchange service in rural and small communities. The Commission cannot make a rational decision on the applicability of cellular eligibility restrictions until it defines "rural telco".

Citizens generally supports proposals to permit post-auction partitioning of PCS service areas. Such partitioning would enable rural telcos to obtain access to spectrum to provide PCS in areas that a MTA or BTA licensee may not serve. However, Citizens opposes proposals to permit partitioning and relax construction requirements. Together, these proposals would enable MTA or BTA licensees to warehouse PCS spectrum until shortly before construction deadlines, which would delay the deployment of PCS in remote and rural areas.

Because of vast distances and low population density in rural areas, Citizens supports increased power limits for PCS base stations

to the extent higher limits would enable PCS licensees to achieve greater coverage at lower cost in rural areas. Citizens also supports a waiver or relaxation of construction requirements for rural areas, although it opposes an overall relaxation of construction requirements if partitioning also is permitted.

Several telcos have petitioned for reconsideration based on their plans to utilize PCS for wireless local loops. Thus, it is essential that the Commission clarify that the prohibition on use of PCS spectrum for "fixed services" does not apply to wireless local loops. The Commission's rules include a similar restriction on cellular licensees' use of cellular spectrum for fixed services except for BETRS, which is used for wireless local loops. Thus, the new PCS rules should not restrict use of PCS for wireless local loops.

Citizens opposes the suggestion by at least one petitioner that the Commission should rely on market forces alone to facilitate deployment of PCS in rural areas. The Congressional mandate could not be more clear that the Commission must actively promote universal deployment of PCS in rural areas and provide economic opportunity for rural telcos. As it reconsiders its PCS rules, the Commission must not abandon its policies that further this mandate.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	FCC 93-451
)	
Amendment of the Commission's)	GEN Docket No. 90-314
Rules to Establish New Personal)	
Communications Services)	RM-7140, RM-7618

To: the Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Citizens Utilities Company ("Citizens"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. 1.429(f), hereby submits its Opposition to Petitions for Reconsideration of rules adopted in the above-captioned proceeding regarding licensing and regulation of personal communications services ("PCS").¹

I. INTRODUCTION

Citizens is a local exchange carrier ("LEC") currently providing service to approximately 150,000 access lines in rural and suburban areas in Arizona, California and Pennsylvania. Citizens is in the process of acquiring from GTE Corporation approximately 500,000 access lines located primarily in rural areas in nine states. Citizens is committed to providing high quality, technically sophisticated service to its present and new customers.

¹ Second Report and Order, GEN Docket No. 90-314, 58 Fed. Reg. 59,174 (1993).

In furtherance of that commitment, Citizens has participated in this proceeding and the related rulemaking on competitive bidding.² Citizens has reviewed the petitions for reconsideration and/or clarification filed in this proceeding and is particularly concerned with proposals that affect rural telephone companies ("telcos") and deployment of PCS in rural and small communities.³

II. RURAL TELCO EXEMPTION FROM CELLULAR ELIGIBILITY RESTRICTIONS

Many parties petitioned the Commission to reconsider whether the rules on cellular licensees' eligibility to obtain PCS licenses should apply to rural telcos. See Petitions of National Telephone Cooperative Association ("NTCA"), Iowa Network Services, Inc. ("Iowa"), Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), U.S. Intelco Networks, Inc. ("USIN"), Anchorage Telephone Utility, Rural Cellular Association ("RCA"), and Telephone and Data Systems, Inc. New rule section 99.204 restricts entities with a cellular ownership interest of 20 percent or more from being eligible for more than one 10 MHz frequency block in any PCS service area where its cellular service area includes 10 or more percent of the population of the PCS service area. Petitioners claimed that, in order to further the statutory mandate to facilitate

² Notice of Proposed Rule Making, PP Docket No. 93-253, released October 12, 1993.

³ Because of the large number of petitions filed, Citizens is submitting one consolidated opposition addressing issues that were raised by several petitioners.

deployment of PCS in rural areas,⁴ the Commission should exempt rural telcos from any restriction on eligibility for PCS licenses based on their ownership interests in cellular licensees. According to petitioners, the Commission's justification for the restriction -- preventing cellular operators from exerting undue market power in the PCS market -- is not relevant in rural areas where few competitors exist in the market.

A. The Commission Must Define "Rural Telco" in the Competitive Bidding Proceeding Before Acting on Petitions for Reconsideration.

Before making any decision on the applicability of cellular eligibility restrictions to rural telcos, the Commission must finalize the definition of "rural telco" for PCS licensing purposes. That definition remains an open issue in the Commission's rulemaking to implement competitive bidding. Parties filing comments and reply comments in that rulemaking strongly opposed the Commission's proposed definition of a "rural telco" that would be eligible to bid on set-aside spectrum blocks and for other preferential bidding procedures. Many alternative definitions were proposed, creating great uncertainty as to which telcos would be eligible for bidding preferences.

Until "rural telco" is defined, it is inappropriate for the Commission to make a decision on the applicability of cellular

⁴ The statute authorizing the Commission to award licenses through competitive bidding amended the Communications Act of 1934 to direct the Commission to promote rapid deployment of PCS in rural areas and provide economic opportunities for rural telcos and other designated entities. Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (Aug. 10, 1993), section 6002(a)(3), codified at 47 U.S.C. section 309(j). See, e.g., Petitions of NTCA at 6-8 and USIN at 2-4.

eligibility restrictions. Parties cannot provide a meaningful response to petitioners' proposals without knowing what entities would fall within the category of "rural telco". Moreover, if the Commission does not define "rural telco" first, it cannot be sure that a decision on the exemption of rural telcos from cellular eligibility rules would further its statutory mandate to facilitate deployment of PCS in rural areas. Accordingly, Citizens urges the Commission to finalize its definition of "rural telco" and, based on that definition, consider the petitioners' request to exempt rural telcos from cellular eligibility restrictions.

B. The Commission Should Define "Rural Telco" to Include Telcos that Serve Primarily Rural Areas.

In comments and reply comments filed in the Commission's competitive bidding rulemaking, Citizens proposed that the Commission formulate a definition of "rural telco" that is tied to the PCS service area for which a telco seeks a license.⁵ To qualify as a "rural telco," a LEC must serve at least one community of 2,500 (or 10,000) or less that is within the MTA or BTA and serve no more than some specified percentage (i.e., 10 percent) of the total population within the MTA or BTA, Citizens proposed. This definition would ensure that only telcos whose primary business is the provision of local exchange service in rural and small communities will qualify as

⁵ See Comments of Citizens Utilities Company (filed November 10, 1993) and Reply Comments (filed November 30, 1993).

"rural telcos".⁶ This approach is superior to both the Commission's proposed definition from the cable-telco cross-ownership rules and definitions based on a telco's total number of access lines.

C. The Commission Should Exempt Rural Telcos from Cellular Eligibility Restrictions.

Assuming the Commission adopts an appropriate definition of "rural telco", Citizens agrees with petitioners' proposal to exempt rural telcos from cellular eligibility restrictions. As petitioners discuss at length, rural telcos are the most likely entities to deploy PCS in rural and remote areas and the best positioned to do so in an efficient manner. As has occurred with other telecommunications services, most PCS applicants will seek to provide service in the generally more lucrative urban centers rather than high-cost rural and remote areas. Rural telcos, on the other hand, have a proven record of providing telecommunications services and are eager to provide PCS in rural areas.

The petition filed by Chickasaw Telephone Company and other independent telcos ("Chickasaw") explains that many rural and small LECs have noncontrolling, minority positions in cellular licensees as a result of cellular market settlements. Petition of Chickasaw at 6-7. Thus, the cellular eligibility restrictions would preclude many rural telcos from obtaining more than a 10 MHz spectrum block in their

⁶ The first prong of this definition would ensure that only LECs that actually serve rural or small communities would qualify as "rural telcos." The second prong of the definition would ensure that LECs serving the major urban population centers in a MTA or BTA would not qualify as a "rural telco."

service areas. Telcos with restricted cellular ownership interests that otherwise qualify as "rural telcos" would not be eligible to bid on the set-aside spectrum blocks. Precluding rural telcos from being PCS providers would be contrary to the Commission's statutory mandate to facilitate deployment of PCS in rural areas. To avoid this result, the Commission should adopt the proposal of petitioners to exempt rural telcos from the cellular eligibility restrictions in new section 99.204.

III. CONSTRUCTION REQUIREMENTS AND PARTITIONING OF PCS SERVICE AREAS

Many parties petitioned the Commission to reconsider its new rule section 99.206, which requires a PCS licensee to provide adequate service to at least one-third of the population in its licensed area within five years of being licensed, two-thirds within seven years, and 90 percent within 10 years. In addition, many of the same parties proposing relaxation of the construction requirements also proposed plans that would permit a PCS licensee to partition its service area and/or its spectrum.

Petitioners appear to anticipate a significant post-auction reconfiguration of PCS service areas and spectrum blocks that would effectively do away with the Commission's allocation scheme. As aptly stated by BellSouth, aftermarket transactions "is where the action will be". Petition of BellSouth Corporation at 20. Citizens generally supports the concept of post-auction partitioning but is concerned that partitioning, especially if coupled with relaxed construction requirements, could result in aftermarket "action" that

also does away with the important public policies served by the Commission's allocation plan, especially the policy to promote deployment of PCS in rural areas.

A. Summary of Petitioners' Proposals

Petitioners have advanced several variations on the proposal to relax construction requirements and permit post-auction partitioning of PCS service areas and spectrum blocks. The Alliance of Rural Area Telephone Cellular Service Providers ("Alliance") proposed permitting partitioning of MTAs and BTAs into separate PCS license areas so that two or more companies can form a consortium and bid with a plan to divide the market area. Partitioning would permit rural counties to be disassociated from the MTAs so as to allow local service providers an opportunity to purchase license rights for such areas, according to the Alliance. The FCC would grant an initial license, and the licensee then could partition the market area through the FCC's "partial assignment of license" procedure, which would permit the FCC to review qualifications of the assignee and pass upon the partitioning plan, the Alliance proposed.

The Alliance also asked for reconsideration of the Commission's construction requirements and proposed that an approach similar to that for cellular unserved areas be adopted for PCS. Under this approach, a licensee that does not meet construction requirements would forfeit only unserved areas rather than the entire license. Moreover, the Alliance urged the Commission to permit a licensee of a partitioned area to construct PCS facilities and retain the license

for its own area even if a licensee in another partitioned area of the same MTA or BTA fails to meet construction requirements. See also Petitions of the RCA and Columbia Cellular Corporation (advocating partitioning of service areas).

NTCA pointed out in its petition that MTAs and BTAs include rural areas with urban areas that may not be logically associated. Thus, the FCC should permit auction winners to assign portions of MTAs or BTAs to rural telcos in a procedure similar to full-market settlements in cellular, NTCA stated. In addition, NTCA urged the Commission to promulgate a waiver rule and clearly articulate a standard for waiver from construction requirements, as well as relax construction requirements for rural areas.

USIN proposed that the Commission require Block C licensees, upon the request of a rural telco, to partition off its PCS service area that matches the telco's service area. The telco would be required to pay a proportionate amount of the winning bid based upon the percentage of the total population in the licensed area. In addition, USIN advocated a requirement that licensees relinquish rights to serve any portion of their licensed markets that are unserved seven years after licensing.

PCS Action's petition focused on partitioning of a licensee's spectrum rather than geographic area. It urged the Commission to permit lower band 30 MHz licensees (Blocks A and B) to lease 10 MHz from a licensee of the lower band 20 MHz Block C. This would enable lower band licensees to aggregate the maximum allowable 40 MHz without the problems of aggregating across the lower and upper bands, PCS

Action stated. McCaw also urged the Commission to permit parties to bid jointly for MTA or BTA licenses and then subdivide PCS operating authority on either a geographic or spectrum basis.

BellSouth, advocating nearly complete reliance on market forces, urged the Commission to minimize regulation of aftermarket reconfiguration and let the market determine the size of PCS spectrum blocks and service areas. The Commission should adopt specific rules for prompt consideration of streamlined assignment and transfer applications and rules facilitating partial assignment of licenses through subdivision of frequency blocks or service areas, BellSouth stated. Spectrum limits and attribution rules should not apply after initial licensing, it added. BellSouth also urged the Commission to eliminate all coverage and construction requirements, noting that the authorizing statute requires the Commission to consider the needs of rural areas but does not require that services be provided everywhere without regard to market demand.

Time Warner Telecommunications, on the other hand, opposed aggregation as a cure for allocating small spectrum blocks, pointing out that major transaction costs and delay in deployment can be expected with post-auctioning aggregation and reconfiguration. It urged the Commission to establish 40 MHz spectrum blocks.

Iowa requested reconsideration of the measure of service in the Commission's construction requirements. By focusing on serving population rather than geographic area, the construction requirements create an incentive for service providers to concentrate on densely populated urban areas to meet the one-third of population requirement

in five years, Iowa stated.

B. The Commission Should Permit Post-Auction Partitioning As Long As the Rules Preserve Policies to Deploy PCS in Rural Areas and on a Universal Basis.

Citizens supports the general aim of petitioners' proposals to permit PCS license applicants and auction winners the maximum flexibility to deploy PCS in an efficient and cost-effective manner. As a telco serving primarily small and rural markets, Citizens recognizes that market partitioning would enable rural telcos, the entities most equipped to provide PCS in rural areas, to do so without having to bid for an entire MTA or BTA. Indeed, because industry giants likely will dominate competitive bidding, partitioning may be the only way some rural telcos (depending on the definition of "rural telco" the Commission adopts) will get access to spectrum to provide PCS. Carefully crafted rules that authorize partitioning would facilitate rapid deployment of PCS in all areas.

Citizens also recognizes that no matter how an entity secures rights to provide PCS, it will be extremely costly and difficult to meet the Commission's construction requirements. The cost of a PCS infrastructure will be particularly expensive in rural areas. See Petition of NTCA. Thus, Citizens supports NTCA's proposal to adopt a waiver standard and relax construction requirements for providers in rural areas.⁷ See also Petition of MEBTEL, Inc. (proposing that

⁷ Citizens opposes an overall relaxation of construction requirements for PCS licensees serving MTAs and BTAs. Relaxing construction requirements definitely would increase the length of time before PCS is available in high-cost rural and remote areas. As they now

licensees operating on Blocks C and D be required to serve one-third of the population in 10 years and two-thirds in 15 years).

Citizens believes, however, that the Commission must carefully analyze the potential effect of adopting petitioners' proposals on PCS deployment, especially in rural areas. Underlying certain of these proposals appears to be a desire to have the Commission permit PCS licensees to obtain as much spectrum as possible, provide service in the most lucrative areas of the market without a mandated time frame, and then, at some point in the future, sell off portions of the service area -- mainly rural areas -- that the licensee decides is not profitable to serve. If construction requirements are relaxed and partitioning permitted, PCS licensees could wait until construction deadlines are approaching before partitioning off unserved portions of its BTA or MTA, effectively warehousing spectrum and delaying deployment of PCS in rural and remote areas. The same result would occur if the unserved area approach of the cellular service is adopted. A PCS applicant would bid to acquire the maximum amount of spectrum for the largest market area that it believes it might be able to serve prior to construction deadlines. If rural portions of the market remain unserved, rural telcos that want to deploy PCS there would have to wait until unserved areas were divested.

From the outset of the PCS proceeding, the Commission has

stand, the construction requirements permit one-third of the population to remain unserved after seven years and 10 percent after 10 years, population that surely will be in rural and remote areas. The goal of making PCS universally available would be thwarted by further relaxing these requirements.

emphasized that universality of service is a fundamental goal of PCS deployment.⁸ Moreover, Congress has mandated that the Commission promote deployment of PCS in rural areas, a policy the Commission has said is served by rural telco preferences in competitive bidding, the PCS allocation scheme and construction requirements. BellSouth attempts to minimize the significance of this Congressional mandate, but the Commission cannot. It must ensure that the objective of promoting PCS deployment in rural areas is not undermined.

Citizens believes that the Commission could permit post-auctioning partitioning in a manner that preserves the goal of universal deployment of PCS. The Commission should consider permitting PCS licensees to partition service areas only if such partitioning occurs within a specified time after licensing, which will prevent licensees from warehousing spectrum that they do not intend to utilize. In addition, the Commission should not relax construction requirements at all if a licensee has the option to partition off portions of its service area that it is not serving.

IV. POWER LIMITS

Several petitioners requested reconsideration of new rule section 99.231, which establishes maximum power limits for PCS base stations and mobile units. See, e.g., Petitions of Telocator, Northern Telecom, Inc., and Motorola, Inc. Parties explained that higher powered systems are essential to achieve coverage in a cost-effective manner in less populated rural areas. Citizens agrees with

⁸See Second Report and Order at para. 5.

petitioners and urges the Commission to increase the maximum base station power limit to at least 1,000 watts ERP.

V. USE OF PCS FOR WIRELESS LOCAL LOOPS

The petitions for reconsideration make clear that LECs anticipate using PCS as a substitute for landline local loop service when it would be a more efficient and less expensive alternative. Southwestern Bell Corporation, for example, discussed its plans to use nonaggregated 10 MHz spectrum blocks for local loop PCS applications. Based on this plan, it recommended that the Commission adopt a target of 25 percent population coverage within 10 years for nonaggregated 10 MHz licenses instead of the Commission's 90 percent requirement. The Petition of Chickasaw also requested rule changes that permit LECs to utilize PCS for local loops whenever that is more economical than wireline loops.

As a telephone company providing service in many rural and remote areas, Citizens recognizes the many advantages of using PCS technology for local loop service similar to how Basic Exchange Telecommunications Radio Service ("BETRS") is used today for local loops. Indeed, the Commission has noted these advantages and promoted such use of PCS.⁹ Questions remain, however, whether PCS local loop configurations would run afoul of the Commission's new rule section 99.3, which states that fixed services may be provided on PCS spectrum only on an ancillary basis to mobile operations. It is conceivable

⁹ See Notice of Proposed Rule Making and Tentative Decision, 7 FCC Rcd 5676 (1992).

that PCS local loop service could be considered a "fixed" service under the definition in new rule section 99.5 because the base station and residence-based handset would be at "specified fixed points".

To ensure that LECs have complete flexibility to use PCS spectrum for local loop service, as described in the petitions of Southwestern Bell and Chickasaw, the Commission should clarify what is meant by "fixed services" in rule section 99.3 and what policy reason exists for restricting fixed service. If the Commission intended that section 99.3 parallel its cellular rules, which restrict use of cellular spectrum for fixed services, then section 99.3 should not restrict local loop PCS applications. Section 22.930 of the cellular rules states that BETRS is "[t]he only fixed service" permitted on cellular spectrum. 47 C.F.R. 22.930. As noted above, LECs plan to use PCS for wireless local loops in areas where they currently would use BETRS.¹⁰ Thus, just as cellular licensees are permitted to use cellular spectrum for BETRS,¹¹ PCS licensees should be permitted to use PCS spectrum for local loops. The Commission must clarify this underlying matter before addressing the issues raised by Southwestern Bell and Chickasaw.

¹⁰ PCS is preferable to BETRS for wireless local loops because an extremely limited amount of spectrum is allocated for BETRS and that limited spectrum is shared with other services. Moreover, in many areas, all the spectrum allocated for BETRS is fully utilized. See Joint Petition for Rulemaking of United States Telephone Association, NTCA, National Rural Telephone Association, OPASTCO and the Rural Electric Administration, RM-8159, filed November 9, 1992 (requesting additional spectrum for BETRS).

¹¹ The new rule section 22.930, which authorizes cellular licensees to provide PCS-type services also permits cellular licensees to use PCS spectrum for BETRS.

VI. CONCLUSION

Citizens agrees with petitioners that certain of the Commission's new rules should be revised to permit efficient and cost-effective provision of PCS. However, Citizens opposes any reconsideration of the rules that would undermine the goal of deploying PCS on a universal basis, particularly in rural areas.

Respectfully submitted,



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December 29, 1993

CERTIFICATE OF SERVICE

I, Antoinette Bever, hereby certify that I have this day, served Citizens Utilities Company's Opposition to Petitions for Reconsideration in **Docket Number 90-314** (Amendment of the Commissions' Rules to Establish New Personal Communications Services), by causing the deposit of a true copy thereof enclosed in a sealed envelope in overnight express mail.

Copies have been delivered by U.S. Mail to all parties on the enclosed Service List.

December 29, 1993


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